

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
SECURITIES AND EXCHANGE :
COMMISSION,Plaintiff,
:
- against -
:TOM SIMEO,
:
Defendant.
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 9/28/2020

19-CV-8621 (PGG) (RWL)

ORDER**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

This order resolves the SEC's request for certain discovery/preclusion rulings in light of Defendant Simeo's belated production of discovery information after multiple failures to comply with court orders to do so. (See Dkt. 42.)

There is no question that Simeo ignored previous court orders and, following a show cause hearing held on September 9, 2020, failed to produce discovery until the last day of the fact discovery period, September 16, 2020. And, as previously found by this Court, Simeo provided no credible explanation for his failure to previously comply. (See Dkt. 37.) The SEC has been severely prejudiced by not having been able to act on and pursue investigation and discovery of the information belatedly disclosed by Simeo; all the more so, because Simeo repeatedly invoked the Fifth Amendment at his deposition.

In light of the above, the SEC filed a letter on September 18, 2020, requesting that the Court enter an order pursuant to Rules 26 and 37(b)(2)(A)(iii) and (c)(1)(C) of the Federal Rules of Civil Procedure (1) striking Simeo's belated witness disclosures; (2) precluding Simeo from introducing or relying upon the new documents and witnesses disclosed, either at trial or in connection with any motion for summary judgment; and

(3) prohibiting Simeo from attempting to pursue additional fact discovery. (Dkt. 42.) That same day, September 18, 2020, this Court issued an order directing that if Simeo wished to respond to the SEC's letter, he shall do so by September 23, 2020, and warning that failure to submit a response "may alone result in granting the relief requested by the SEC." (Dkt. 43.) Simeo did not submit a response.

Accordingly, the SEC's application is granted in part and denied in part, and the Court orders as follows:

1. The witnesses on Simeo's witness list are struck except for witnesses Yang and Zhong, of whom the SEC had prior knowledge and who appeared on the SEC's initial disclosures (albeit without known addresses);
2. Simeo may not introduce or rely upon the new documents and witnesses disclosed, either at trial or on summary judgment, except that Simeo may introduce or rely upon witnesses appearing on Simeo's list that also appear on the SEC's initial disclosures.
3. Simeo is precluded from pursuing additional fact discovery, having repeatedly foregone his ample opportunity to do so.
4. If the SEC so chooses, it may request an extension of the discovery period to pursue discovery from witnesses Yang and Zhong as a result of Simeo now having provided addresses for them. By **October 7, 2020**, the SEC shall file a letter notifying the Court whether it wishes to pursue that discovery, and, if so, a proposed schedule for doing so. Defendant Simeo may respond to the proposal no later than **October 14, 2020**.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: September 28, 2020
New York, New York

Copies transmitted this date to all counsel of record.